Supreme Court, U. S.
FILED
DEC 12 1980
MICHAEL RODAK, JR., CLERK

No. 80-750

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CLAUDE WARDLE, SR.,
Petitioner,
v.
CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondent would frame the issue as follows: Whether the Petitioner is entitled to a jury trial in an action, based on § 502(a)(1)(B), of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(1)(B), seeking a determination of whether the Trustees of Respondent Fund acted arbitrarily and capriciously in denying Petitioner pension benefits?

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OPINIONS BELOW

The Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit is reported at 627 F. 2d 820. The decision and judgment of the United States District Court for the Southern District of Indiana in this case is not yet officially reported. (Pet. App. 26-29) The District Court's Order denying Petitioner's Demand for a Jury Trial is also unreported. (Pet. App. 21-24)

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 25) was entered on August 14, 1980. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The relevant portions of the Employee Retirement Income Security Act of 1974 are § 502, 29 U.S.C. § 1132, which are adequately set forth in the Petition at pages 2-3.

STATEMENT OF THE CASE

For purposes of this Petition, Respondent believes that the facts as set forth at pages 6-7 of the Petition adequately describe the nature of this case.

SUMMARY OF ARGUMENT

Section 502 of the Employee Retirement Income Security Act of 1974 is silent as to whether a plaintiff seeking pension benefits is entitled to a jury trial. The Court of Appeals for the Seventh Circuit has now correctly held that this silence indicates a legislative acceptance of the traditional rule that actions seeking review of trustee determinations as to eligibility for benefits from a pension trust fund are equitable in nature and, therefore, not appropriate for jury trial. Because this simply mirrors the well-established common law of trust fund administration, requiring a standard of review customarily within the exclusive province of the court, Petitioner's claim and this Petition herein must be denied.

REASONS FOR DENYING THE WRIT

I. Because Petitioner's Action Is Equitable In Nature, He Is Not Entitled To A Jury Trial On The Merits Of His Claim.

In the absence of any statutory language granting the right to a jury trial, resolution of the question depends upon the nature of the issue to be tried. *Ross* v. *Bernhard,* 396 U.S. 531, 538 (1970). "The issues, and not the form of the case, determine the right to a jury trial, and if the basic issue is one which historically was for the jury, a jury demand should be respected." *Sichko* v. *Lewis,* 191 F. Supp. 68, n. 1 (W.D. Pa. 1960). Thus, the test for determining the right to a jury trial is whether the issue to be tried is traditionally equitable or legal in nature. Once it is determined that a case is of equity jurisdiction, there is no right to a jury trial. *Katchen* v. *Landy,* 382 U.S. 323, 337 (1966); *Pernell* v. *Southall Realty,* 416 U.S. 363, 375 (1974); *SEC* v. *Commonwealth Chemical Securities, Inc.,* 574 F. 2d 90, 95 (2d Cir. 1972).

The precedent is clear that suits to obtain benefits from pension trust funds are essentially equitable in nature, and therefore, no right to a jury trial exists. *Rice* v. *Hutton,* 487 F. Supp. 278, 279-280 (W.D. Mo. 1980); *Genesta* v. *San Diego County Laborers' Pension Plan,* ____ F. Supp. ____, 87 L.C.[1] ¶ 11,702 (S.D. Cal. 1979); *Porter* v. *Central States, Southeast and Southwest Areas Pension Fund,* ____ F. Supp. ____, 98 LRRM 3210 (N.D. Iowa, 1978); *Davis* v. *Huge, et al.,* ____ F. Supp. ____, 91 LRRM 2234 (E.D. Ky. 1975); *Nedd* v. *Thomas,* 316 F. Supp. 74 (M.D. Pa. 1970); *Sichko, supra; Szuch* v. *Lewis,* 193 F. Supp. 831 (D. D.C. 1961); *Roark* v. *Lewis,* 401 F. 2d 425 (D.C. Cir. 1968). The issue in cases such as Petitioner's is whether the trustees' decision was arbitrary or capricious, erroneous as a matter of law, or not supported by substantial

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[1] Cases not reported in the West Publishing Company Reporters will be cited to the Labor Services of the Commerce Clearing House or the Bureau of National Affairs.

evidence. *Pete* v. *U.M.W.A. Welfare and Retirement Fund,* 517 F. 2d 1275 (D.C. Cir. 1975); *Riley* v. *MEBA Pension Trust,* 511 F. 2d 975 (2d Cir. 1975); *Reiherzer* v. *Shannon,* 581 F. 2d 1266 (7th Cir. 1978); *Phillips* v. *Kennedy,* 542 F. 2d 52 (8th Cir. 1976); *Bueneman* v. *Central States, Southeast and Southwest Areas Pension Fund,* 572 F. 2d 1208, n. 3 (8th Cir. 1978); *Rehmer* v. *Smith,* 555 F. 2d 1362 (9th Cir. 1977); *Johnson* v. *Central States, Southeast and Southwest Areas Pension Fund,* 513 F. 2d 1173 (10th Cir. 1975). As pointed out by the court in *Genesta, supra* at p. 22,827: "[T]he standard of judicial review in this case is a limited one, which simply presents no issues for a jury to determine."

Petitioner takes offense to the *Genesta* opinion, asking rhetorically: "Since when does the standard of review to be employed by the trier of fact determine whether an action is legal or equitable in nature?" (Pet. 17) As the courts below emphasized, the *issue* to be tried is whether the Trustees acted arbitrarily and capriciously in denying Petitioner pension benefits; since this issue has historically been exclusively equitable, Petitioner is not entitled to a jury trial. *Restatement (Second) of Trusts,* § 197 (1959); *Sichko, supra; Davis, supra; Porter, supra.*

To avoid this precedent, Petitioner argues that both *Davis* and *Porter* are distinguishable because they were decided without reference to either Section 301 of the LMRA or ERISA. (Pet. 15-16) If Petitioner is claiming that ERISA somehow altered the issue, and therefore the standard of review, in eligibility cases, his theory is fully rebutted by the many courts which have specifically applied the traditional issue of arbitrary or capricious trustee action in post-ERISA litigation. *Bueneman* v. *Central States, Southeast and Southwest Areas Pension Fund, supra; Reiherzer, supra; Phillips, supra; Morgan, et al.* v. *Laborers Pension Trust Fund for Northern California, et al.,* 433 F. Supp. 518 (N.D. Cal. 1977). Indeed, overlooking the traditional issue to be decided in pension eligibility cases is the crucial defect in *Stamps* v. *Michigan Teamsters Joint Council*

No. 43, 431 F. Supp. 745 (E.D. Mich. 1977) and *Bouton* v. *Central States, Southeast and Southwest Areas Pension Fund,* (Pet. App. 30-35), both of which ignore the applicable issue and the standard of review to be utilized in these cases.

Petitioner also argues that because the complaint sought money from the date of his pension application to the date of judgment "which the Respondent's Trustees were under a duty to pay unconditionally and immediately", this part of the action sought a legal remedy regardless of whether equitable remedies were also sought. (Pet. 17) Petitioner's argument is deficient in several respects.

This Court has already cautioned that not every demand for monetary relief must necessarily be "legal" relief. *Curtis* v. *Loether,* 415 U.S. 189, 196 (1974). Moreover, as Judge Hermansdorfer pointed out in *Davis, supra* at 2235-2236, "The issue as to the amount of pension benefits due plaintiff will never arise, of course, unless the first obtains a declaratory judgment certifying his entitlement to benefits.... Consequently, the initial issue as to entitlement must be said to be one whose objective is relief of an equitable nature." Thus, no matter how Petitioner characterizes the language contained in his complaint, he must still prove that the Trustees have an unconditional and immediate duty to pay benefits to him because they have been arbitrary and capricious in denying him benefits. Actions to review the propriety of the trustees' activities and decisions are simply not claims for a definite and clear legal debt; the benefits eligibility issue is exclusively equitable, and no jury trial is appropriate. *Restatement (Second) of Trusts,* § 197 (1959). Only when liability has been determined, does the case address, " ... The contingent issue of damages [which] is an inherently 'legal' one, to which the right of trial by jury could attach." *Davis, supra* at 2236. Here, there is no issue of damages because Respondent Fund has agreed Petitioner is entitled to its monthly benefit if his liability theory prevails. *A fortiori,* there is no basis for a jury demand.

II. Section 502(a)(1)(B) Of Erisa Does Not Reverse The Established Rule That Equitable Actions Seeking Review Of Pension Trust Fund Eligibility Determinations Cannot Be Tried To A Jury.

The Court of Appeals held that ERISA did not alter the treatment of pension benefit eligibility cases, but simply provided concurrent federal and state court jurisdiction in such matters. *Wardle* v. *Central States, Southeast and Southwest Areas Pension Fund,* 627 F. 2d 820, 828-830 (7th Cir. 1980). Manifested by the continuation of the standard of proof inquiring only whether the Trustees' action had been arbitrary or capricious, e.g., *Bayles* v. *Central States, Southeast and Southwest Areas Pension Fund,* 602 F. 2d 97 (5th jCir. 1979); *Reiherzer* v. *Shannon, supra; Bueneman* v. *Central States, Southeast and Southwest Areas Pension Fund, supra,* the equitable context of these trust fund administration cases has persisted because ERISA was never intended to alter that established law. Petitioner rejects the Court of Appeals' analysis and ignores the equitable nature of this action by attempting to contort the jurisdictional grant in § 502 into a far-reaching revision of this legal system, for only by totally departing from the common law can a right to a jury trial be created.

Petitioner first offers the reasoning in *Stamps, supra.*[2] The *Stamps* court reasoned that if claims under § 502(a)(1)(B) were construed as equitable, that subsection would become "mere surplusage" in light of § 502(a)(3), which expressly provides participants and beneficiaries with a right to bring a civil action for various kinds of equitable relief. *Stamps, supra,* pp. 746-747. The Court of Appeals correctly declined to follow the *Stamps* reasoning, holding that Subsubsection (1)(B) is not surplusage in light of Subsubsection (3) "because Congress

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[2] This argument was repeated in *Pollock* v. *Castrovinci,* 476 F. Supp. 606 (S.D. N.Y. 1979) and *Bouton* v. *Central States, Southeast and Southwest Areas Pension Fund.* (Pet. App. 30-35)

granted State Courts concurrent jurisdiction only over § 502(a)(1)(B) claims. 29 U.S.C. § 1132(e)(1)." *Wardle, supra* at 829. Senator Harrison A. Williams' statement as Chairman of the Senate Committee on Labor and Public Welfare, upon introducing the Conference Report on H.R. 2 (later to be codified as 29 U.S.C. § 1001, *et seq.*) supports the Court of Appeals' distinction: "In addition, participants and beneficiaries may bring suit to recover benefits denied contrary to the terms of the plan, and where such claims by participants or beneficiaries do not involve application of the substantive requirements of this legislation, they may be brought in either State or Federal Courts of competent jurisdiction." H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. Code & Ad. News 5177, 5188. Thus, where claims of participants and beneficiaries do not involve the substantive and regulatory requirements of ERISA, a civil action may be filed in federal court pursuant to § 502(a)(1)(B) or in state court pursuant to § 502(e)(1). The Court of Appeals clearly relied upon this distinction when it discussed the *Stamps* "surplusage" reasoning and ruled that the specific types of claims in Subsubsection (1)(B) would still have to be separated from the general equitable actions under subsubsection (3), *Wardle, supra* at 829, and this contention makes groundless Petitioner's argument that § 502's statutory scheme implies that § 502 (a)(1)(B) claims are legal rather than equitable.[3]

Petitioner next argues that the "plain and logical reasoning of (1)(B) leads to the belief that the distinction [between legal and equitable claims] is already clear as written...." (Pet. 13) At the same time, Petitioner concedes that two types of equitable relief are available under §502(a)(1)(B), specific performance and

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[3] In the same vein, Petitioner argues that "resort by the Court of Appeals to subsubsection (3) is improper". (Pet. 12) If such is the case, Petitioner is in no position to "implore" the adoption of the *Stamps* rationale because its very basis is a comparison of the language contained in these two subsubsections. (Pet. 10)

declaratory judgments, but seeks to soften this point by arguing that legal relief is also available thereunder in the form of money damages to recover benefits, *Id.*, citing the *Restatement (Second) of Trusts,* § 198 (1959) and some legislative history from ERISA to support this theory.

First, § 198, *supra,* states that a beneficiary may maintain an action of law *if* the trustee is under a duty to pay him money immediately and unconditionally. As held in *Davis* v. *Huge, supra,* money damages may warrant a jury trial on the amount after liability has been determined, but it was the very duty to pay benefits which was the subject of this controversy. Moreover, the right to the remedy of the beneficiary against the trustee is exclusively equitable. *Restatement (Second) of Trusts,* § 197 (1959); unless the benefits sought are immediately and unconditionally due in accordance with § 198, *supra,* there is no legal right yet in issue.

Petitioner gains no greater support from his references to ERISA's legislative history. (Pet. 13-14) The citations on pages 13-14 of the Petition relate to the legal and equitable remedies participants, beneficiaries, and the Secretary of Labor would enjoy whenever any party sought relief to redress or restrain a violation of such Trustees' fiduciary duties as misuse of fund assets or imprudent actions. This action does not involve a violation of the Trustees' fiduciary duties,[4]; on the contrary, it is only an action seeking review of the Trustees in determining that one man was not eligible for benefits under the trustees' published rules. *Restatement (Second) of Trusts,* § 197 (1959).

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[4] In this regard, *Pollock, supra,* is supportive of the Respondent's position. In that case the plaintiff sought and was granted a jury trial on Counts I through IV of her complaint which alleged that the defendants violated §§ 403(c)(1), 403(d)(1), 404(a)(1), 406(a)(1)(D), and 406(b) of ERISA, the fiduciary duty provisions of the statute. *Id.* at 68. Because the nature of the action in *Pollack* is clearly distinguishable from the instant case, it need not be further discussed here.

Neither is Petitioner helped by the reference to § 301 of the Labor-management Relations Act, 29 U.S.C. § 185, in the Joint Explanatory Statement of the Committee of Conference. H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess., *reprinted in* [1947] U.S. Code Cong. & Ad. News 5038, 5107. Although the *Stamps* court stretched this comment into some notion of parity which grants a jury trial in an ERISA case if the same facts would allow one under § 301, the Court of Appeals correctly noted that the Committee only stated § 502(a)(1)(B) claims are to be regarded "in similar fashion" to § 301 actions, not that the identical rules of federal common law are necessarily to apply in both statutory claims. *Wardle, supra* at 829. The reference to § 301 only suggests a Congressional intention that the federal courts create a federal common law in ERISA civil actions "just as the Supreme Court in *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 456 (1957), ruled that the courts could establish federal common law for claims 'arising under' § 301 of the Labor Management Relations Act." *Id.*

Petitioner's treatment of § 502 and ERISA's Legislative history do not erase one very important fact: the language of the statute does not provide for a jury trial. Congress could have inserted the term "legal relief" in § 502, but twice chose not to do so.[5] Thus, assuming *arguendo* that the discrimination cases Petitioner cites somehow apply to ERISA litigation, such an omission by Congress proves fatal to Petitioner's contentions. (Pet. 9-10, 19-20) Indeed, the phrase "legal relief" contained in § 7(c) of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621, 626(c), was the basis for this Court's holding that an aggrieved person bringing suit under the ADEA had a right to a jury trial. *Lorillard* v. *Pons,* 434 U.S. 575, 583-584 (1978). Similarly, in *Curtis* v. *Loether, supra,* an

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[5]The Multi-Employer Amendments to ERISA were signed into law by the President on September 26, 1980. No mention is made of a right to a jury trial. ERISA Amendments, Pub. L. No. 96-364 (1980) [to be codified in 29 U.S.C. § 1001, *et seq.*]

action under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3612, (which authorizes the Court to award, *inter alia,* "actual damages" to a successful plaintiff), this Court ruled that Curtis's claim was legal in nature, and therefore entitled to a jury trial, noting that damages are "the traditional form of relief offered in the courts of law". 415 U.S., at 196. Here, however, § 502 of ERISA makes no mention of "legal relief" or "damages", so the statutory remedy cannot be extended to become a basis for the right to a jury.

Indeed, the language of Section 502 is analogous to that of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g), where the court may order reinstatement "with or without backpay ... or any other equitable relief as the court deems appropriate", *Id.;* this Court has specifically recognized the absence of the necessary "legal relief" or "damages" terminology and held that a plaintiff seeking reinstatement and back pay under Title VII of the Civil Rights Act of 1964 is not entitled to a jury trial. *Curtis, supra,* at 196-197, n. 13; 5 Moore's *Federal Practice* ¶ 38.27, at 38-223 (2d ed. 1980). Even if *Lorillard* and *Curtis* are applicable to the instant case, they do not support Petitioner, for coupled with Section 502's complete statutory silence on the issue of a jury trial, these rulings allow only one conclusion: Section 502 does not grant the Petitioner a right to a jury trial.

ERISA is a broad and complex statutory attempt to deal with such diverse problems as trust fund investment policy, insurance for bankrupt funds, minimal vesting rights, and elaborate reporting rules. A single provision granting concurrent federal and state court jurisdiction over a preexisting area of law, without making any other modifications in its rules or procedures, did not suddenly negate the equitable nature of eligibility cases or create, *sub silentio,* a new right to jury trial.

CONCLUSION

Respondent submits that the Court of Appeals correctly ruled Petitioner was not entitled to a jury trial under § 502(a)(1)(B) of ERISA. The *Stamps* and *Bouton* opinions are unfounded departures from the correct and traditional authority regarding this issue, and their interpretation of § 502(a)(1)(B) is not supported by the statutory language or the legislative history. Contrary to Petitioner's contention, the Court of Appeals did not "ignore" *Stamps'* reasoning, (Pet. 21); rather, the Court of Appeals considered *Stamps* and rejected it. *Wardle, supra* at 828-830. The Court of Appeals' decision correctly applied the applicable law: suits to review trustee determination of pension benefit eligibility are equitable actions which are not appropriate for jury trial. Therefore, Respondent requests that the Petition be denied.

Respectfully submitted,

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